



OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

August 1, 1975

BRUCE E. BABBITT
ATTORNEY GENERAL

R75-421
75-247 P

Mr. L. E. Woodall, Chairman
Fund Managers, PSPRS
Arizona Board of Regents
1535 West Jefferson
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Dear Mr. Woodall:

This is in response to your July 1 letter requesting
an answer to the following:

- 1) Does HB 2086 contemplate that the
money appropriated therein will be
available for payment to retirees affected
on July 1, 1975, or not until September
12, 1975?
- 2) Should this money be transferred
in a lump sum to the Public Safety
Personnel Retirement System depository
for disbursement?

The 1975 session of the Legislature enacted HB 2086,
which provides as follows:

Be it enacted by the Legislature of
the State of Arizona:

Section 1. Appropriation; purpose

A. The sum of forty-four thousand two
hundred twenty dollars is appropriated
to the fund manager of the public safety
personnel retirement system to be im-
mediately deposited in the public safety
personnel retirement fund and to be
used only for the purpose provided in
this section.

B. The sum appropriated in subsection
A of this section shall be used only
for the fiscal year that begins July 1,
1975, for payment of a cost of living
increase of five per cent in the rate
of payments payable to retirees who
were receiving retirement benefits on
June 30, 1968, under any of the three



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prior retirement systems as referred to in section 38-841, Arizona Revised Statutes. The increase in benefits provided in this section shall be based on the retirement benefits that such retirees are receiving under any of such three prior systems on the effective date of this act.

The date upon which this act becomes operative is governed by Article 4, Part 1 § 1(3) of the Arizona Constitution which provides, in pertinent part, that:

. . . to allow opportunity for Referendum Petitions, no Act passed by the Legislature shall be operative for ninety days after the close of the session of the Legislature enacting such measure, except such as require an earlier operation to preserve the public peace, health, or safety, or to provide appropriations for the support and maintenance of the Departments of the State and of State institutions . . .

Under this provision, all acts enacted by the 1975 session of the Legislature will become operative on September 12, 1975, (ninety days after the close of the session), unless they were enacted as emergency measure "to preserve the public peace, health, or safety" or unless they "provide appropriations for the support and maintenance of the Departments of the State and of State institutions".

It is clear that HB 2086 was not enacted as an emergency measure since the Constitution requires that such acts state in a separate section why it is necessary that they shall become immediately operative. The question presented therefore is whether HB 2086 was enacted "to provide for the support and maintenance" of the Public Safety Personnel Retirement System.

The fact that the Act appropriates funds is not dispositive of the issue. In Warner v. White, 39 Ariz. 203, 4 P2d 1000 (1931), an act creating a special tax survey commission and prescribing its functions was held not to be an appropriation measure even though it also provided for funds to carry out its terms. Since the act created a new state agency and the appropriation was merely incidental to its creation, the court held that the act was subject to the referendum and not within the constitutional exemption.

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The fact that the act earmarks the funds for a specific purpose, however, does mean that it is not for the support and maintenance of a state institution. In Garvey v. Trew, 64 Ariz. 342, 1970 P2d 845 (1946), an act directing the Corporation Commission to conduct an investigation to ascertain the fair market value of the property of public service corporations and appropriating funds to pay the expenses of the investigation was held to be an appropriation measure not subject the referendum. The court stated that:

Patently, the test of whether the appropriation is for the support and maintenance is not the earmarking for a specific purpose, but rather are the funds appropriated for the use in carrying out the objects and functions of the department. 64 Ariz. at 347.

It is the opinion of this office that the situation presented here is governed by the Garvey case. The five per cent cost of living increase in retirement benefits provided for by HB 2086 does not change the objects or functions of the Public Safety Personnel Retirement System. No new agency is created and no new powers are granted by the act. It is our conclusion, therefore, that HB 2086 should be regarded as an appropriations' measure and not subject to the ninety-day period before becoming operative.

A.R.S. § 35-102(A) provides that the fiscal year for the expenditure of appropriations commences on July 1, each year. In light of this provision, we conclude that the funds appropriated by HB 2086 were available to the Public Safety Personnel Retirement System on July 1, 1975. Section 2 of the act further provides that the funds should be used only for payment to retirees after that date and during the fiscal year.

The funds appropriated by HB 2086 should be transferred in a lump sum to the Public Safety Retirement System depository. The act provides that the funds are "to be immediately deposited in the public safety personnel retirement system fund". This fund, by statute, is required to be held in a depository bank and is thus not subject to the financial provisions governing other state funds. A.R.S. § 38-848(B) provides, in pertinent part, as follows:

There shall be a Public Safety Personnel Retirement System depository in which all monies in the fund shall be deposited and held, and from which monies in the fund shall be disbursed, separate and apart from all monies or funds of the state . . .
(Emphasis added.)

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Since HB 2086 appropriated money "to the Fund Manager" and provided that it "be immediately deposited," a lump sum transfer of the money is required.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce Babbitt", with a stylized, sweeping flourish at the end.

BRUCE E. BABBITT
Attorney General

BEB:FN:ss